

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' AMENDMENT OF REQUEST FOR ADDITIONAL TIME AND
PAGES FOR APPEAL RESPONSE BRIEF**

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Supreme Court Chamber
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I. INTRODUCTION

1. The Co-Prosecutors seek to amend their request for an extension of time and pages to file their appeal response brief. The amendment is necessary given the death of Nuon Chea and the resulting termination of his appeal.¹ The Co-Prosecutors' original request for a proportional 70% of the combined total of pages and 50% of the combined time granted to both Nuon Chea and Khieu Samphan² is therefore now moot.
2. Nonetheless, the Co-Prosecutors maintain their submission that a period of five months and 300 pages for Khieu Samphan to file his appeal brief, in one language, is reasonable.³ Consequently, as the Co-Prosecutors will be responding only to Khieu Samphan's appeal, they request to be granted the same as any extensions of time and pages granted to Khieu Samphan. If the Supreme Court Chamber were to accept the Co-Prosecutors' submission of what is a reasonable extension in this case, the Co-Prosecutors would therefore request five months and 300 pages for their response brief, in one language, with the Khmer translation to follow as soon as possible, and the filing deadline falling no earlier than 25 days after the Khmer version of Khieu Samphan's appeal brief has been notified.

II. PROCEDURAL HISTORY

3. The Case 002/02 Trial Judgment was issued in summary form on 16 November 2018.⁴ On 28 March 2019, the Trial Chamber provided its full reasoned judgment.⁵
4. On 3 April 2019, Khieu Samphan requested a total of 240 days and 100 pages in French to file his notice of appeal.⁶ On 26 April 2019, the Supreme Court Chamber granted the Parties an extension of two months and increased the page limits from 30 to 60 pages for the notice of appeal.⁷ On 1 July 2019, Khieu Samphan filed his notice of appeal⁸ purportedly identifying 1,824 grounds of appeal and 355 appealable decisions.⁹

¹ **F46/3** Decision to Terminate Proceedings Against Nuon Chea, 13 August 2019 (“Decision to Terminate Appeal”).

² **F47/1** Co-Prosecutors' Response to Nuon Chea's Request for Additional Time and Page Limits for His Appeal Brief, 1 August 2019, (“OCP Response to Nuon Chea's Extension Request”) para. 25.

³ **F45/2** Co-Prosecutors' Response to Khieu Samphan's Request for Additional Time and Page Limits for Appellate Briefs, 22 July 2019 (“OCP Response to Khieu Samphan's Appeal Brief Requests”), para. 17.

⁴ Case 002/02 Summary of Trial Judgment, 16 November 2018.

⁵ **E465** Case 002/02 Trial Judgment, 28 March 2019.

⁶ **F39/1.1** Demande de la Défense de KHIEU Samphân aux fins d'extension du délai et du nombre de pages de sa déclaration d'appel, 3 April 2019, para. 42.

⁷ **F43** Decision on Nuon Chea and Khieu Samphan's Requests for Extensions of Time and Page Limits on Notices of Appeal, 26 April 2019, para. 11.

⁸ **E465/4/1** Déclaration d'appel de KHIEU Samphan (002/02), 1 July 2019.

⁹ **F45** Demande de la Défense de KHIEU Samphân aux fins d'extension du délai et du nombre de pages de son mémoire d'appel, 10 July 2019 (“Khieu Samphan's Appeal Brief Extensions Request”), para. 9.

5. On 10 July 2019, Khieu Samphan requested a total of 10.5 months and 950 pages for his appeal brief.¹⁰ The Co-Prosecutors opposed this request on 22 July 2019, on the basis that the extensions requested were unprecedented and unwarranted.¹¹ On the same day as the Co-Prosecutors responded to Khieu Samphan, Nuon Chea filed his request for an extension of time and pages, seeking a total of 10.5 months and 1,000 pages for his appeal brief.¹² The Co-Prosecutors opposed this on 1 August 2019, on the basis that Nuon Chea had failed to justify his extraordinary request.¹³
6. On 4 August 2019, Nuon Chea died in custody.¹⁴ The Supreme Court Chamber consequently terminated appeal proceedings against Nuon Chea on 13 August 2019.¹⁵

III. SUBMISSION

7. Upon reviewing the appeal brief extension requests from both Khieu Samphan and Nuon Chea,¹⁶ the Co-Prosecutors requested a proportional extension for their response brief of 70% of the combined total of pages and 50% of the combined time granted to the Defence teams,¹⁷ with a deadline for filing, in one language, falling no earlier than 45 days after the Khmer translation of the Defence appeal briefs.¹⁸ With Nuon Chea's death and the extinguishing of his appeal,¹⁹ that request is now moot.
8. The ECCC's Practice Direction on Filing Documents provides for a response brief to be the same length as an appeal brief.²⁰ This is in line with the applicable rules of other internationalised or international tribunals²¹ as well as international practice which grants equal

¹⁰ **F45** Khieu Samphan's Appeal Brief Extensions Request, para. 19.

¹¹ **F45/2** OCP Response to Khieu Samphan's Appeal Brief Requests.

¹² **F47** Nuon Chea's First Request for an Extension of Time and Page Limits for Filing his Appeal Brief Against the Trial Judgement in Case 002/02, 23 July 2019 ("Nuon Chea's Extension Request"), para. 1.

¹³ **F47/1** OCP Response to Nuon Chea's Extension Request.

¹⁴ **F46/1** Co-Prosecutor's Submission of Nuon Chea's Death Certificate, 5 August 2019.

¹⁵ **F46/3** Decision to Terminate Appeal.

¹⁶ **F45** Khieu Samphan's Appeal Brief Extensions Request; **F47** Nuon Chea's Extension Request. Contrary to Khieu Samphan's assertion, the Co-Prosecutors' request was not an 'evolution', merely a considered request made once Khieu Samphan and Nuon Chea had filed extension submissions, see **F47/3** Réponse de la Défense de KHIEU Samphan à la demande de l'Accusation concernant sa réponse aux mémoires d'appel [F47/1, §25-26(ii)] ("Khieu Samphan's Response to OCP Request"), paras 7, 10-12, 23.

¹⁷ See **F9** Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014 ("Case 002/01 Decision on Extensions"), para. 15.

¹⁸ **F47/1** OCP Response to Nuon Chea's Extension Request, para. 25.

¹⁹ **F46/3** Decision to Terminate Appeal.

²⁰ Practice Direction on Filing of Documents Before the ECCC, ECCC/01/2007/Rev.8, (amd. 10 May 2011), art. 5.2. "A document filed to the Pre-Trial Chamber or the Supreme Court Chamber of the ECCC shall not exceed 30 pages in English or French or 60 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC."

²¹ International Residual Mechanism for International Tribunals: Practice Direction on Lengths of Briefs and Motions, MICT/11/Rev.1, 20 February 2019 ("MICT Practice Direction"), para. 6: "The Appellant's brief in an appeal from a final judgment of a Trial Chamber shall not exceed 30,000 words", para. 7: "The Respondent's

extensions of page limits for appeal and response briefs in similarly sized single-accused cases.²²

9. Likewise, regarding time extensions, international practice in similarly sized single-accused cases shows that while the rules of international tribunals mandate less time for a response brief,²³ extensions granted for the response brief tend to be commensurate with that provided for the appeal brief. For example, in both the *Mladić* and *Karadžić* cases, while the relevant rules provide that a response brief is to be filed 40 days after the appeal brief,²⁴ the extensions granted for *both* the appeal brief and response brief was 60 days.²⁵
10. The Co-Prosecutors submit that parity in terms of extensions of time and pages between the appeal and response briefs is necessary in this case. Khieu Samphan's notice of appeal, beyond being extraordinary in the sheer number of appellate grounds alleged, has yet to provide clarity as to the precise factual, legal, or procedural matters at issue.²⁶ It is therefore likely, based on his stated number of grounds of appeal and the simple exigencies of any reasonable page limit, that Khieu Samphan will raise many errors without fully developing arguments in support. Should the Supreme Court Chamber accept incomplete, unclear grounds, which the Co-Prosecutors suggest it should not do, the Co-Prosecutors will be obliged to attempt to interpret and respond to all such issues in order to assist the Chamber.
11. Thus, the Co-Prosecutors request that they be granted the same time and page extensions as any granted to Khieu Samphan. Further, in line with the Supreme Court Chamber's holding in

brief in an appeal from a final judgment of a Trial Chamber shall not exceed 30,000 words"; International Criminal Court: Regulations of the Court, ICC-BD/01-05-16, 26 May 2004 ("ICC Regulations"), reg. 58(3): "The appeal brief shall not exceed 100 pages.", reg. 59(2): "The response shall not exceed 100 pages."; Special Court for Sierra Leone: Practice Direction on dealing with Documents in The Hague Sub-Office, (amd. 25 April 2008) art. 6(E)(i): "The brief of an Appellant against a judgment or a sentence shall not exceed 100 pages or 30,000 words, whichever is greater", art. 6(E)(ii): "The response brief of a Respondent on an appeal against a judgment or a sentence shall not exceed 100 pages or 30,000 words, whichever is greater".

²² See, e.g., *Prosecutor v Mladić*, MICT-13-56-A, Decision on Ratko Mladić's Motion for Extensions of Time and Word Limits, 22 May 2018 ("*Mladić* Decision"), p. 4; *Prosecutor v Karadžić*, MICT-13-55-A, Decision on a Motion for an Extension of a Word Limit, 8 September 2016, p. 3; *Prosecutor v Jean-Pierre Bemba*, ICC-01/05-01/08 A, Decision on Mr Bemba's Request for an Extension of Page Limit for his Document in Support of the Appeal, 11 July 2016, paras 13-14.

²³ See, e.g., ICC Regulations, reg. 58(1): "(...) the appellant shall file an appeal brief within 90 days of notification of the relevant decision", reg. 59(1) "A participant may file a response within 60 days of notification of the appeal brief described in regulation 58 (...)"

²⁴ Rules of Procedure and Evidence, MICT/1/Rev.2, (rev. 4 March 2019), rule 138: "An Appellant's brief setting out all the arguments and authorities shall be filed within seventy-five days of filing of the notice of appeal pursuant to Rule 133. (...)", rule 139: "A Respondent's brief of argument and authorities shall be filed within forty days of filing of the Appellant's brief. (...)"

²⁵ *Mladić* Decision, p. 3-4; *Prosecutor v Karadžić*, MICT-13-55-A, Decision on A Joint Motion for Extension of Time to File Appeal and Response Briefs, 9 August 2016, p. 2; *Prosecutor v Karadžić*, MICT-13-55-A, Decision on Renewed Prosecution Motion for an Extension of Time to File the Response Briefs, 9 January 2017, p 2-3.

²⁶ See **F45** Khieu Samphan's Appeal Brief Extensions Request, para. 18.

Case 002/01,²⁷ the Co-Prosecutors request that the deadline for filing their response brief, in one language, should be at least 25 days after the Khieu Samphan appeal brief has been notified in Khmer.²⁸ This is to respect the bi-lingual requirements of the Court as well as to allow the national prosecutors adequate time to review Khieu Samphan's arguments in Khmer and ensure that the positions adopted by the national and international prosecutors during the preparation of the response remain coordinated.

IV. REQUESTED RELIEF

12. Based on the foregoing, the Co-Prosecutors respectfully request the Supreme Court Chamber: (i) grant Khieu Samphan a reasonable extension of five months and 300 pages to file his appeal brief, in one language, and (ii) grant the Co-Prosecutors five months and 300 pages for their response brief, in one language, with the Khmer translation to follow as soon as possible, and the filing deadline falling no earlier than 25 days after the Khmer version of Khieu Samphan's appeal brief has been notified.

Respectfully submitted,

Date	Name	Place	Signature
19 August 2019	CHEA Leang National Co-Prosecutor	Phnom Penh 	
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	Brenda J. HOLLIS Reserve International Co-Prosecutor		

²⁷ The Supreme Court Chamber in Case 002/1 rejected both (i) that the Co-Prosecutors deadline should start running from the filing of the Khmer translations, and (ii) that the Co-Prosecutors deadline should start to run from the time of filing in one language only. Instead, the Supreme Court Chamber held that the Co-Prosecutors deadline would be due 30 days after the notification of the Khmer version of whichever Defence appeal brief was notified last. *See*, F9 Case 002/01 Decision on Extensions, paras 20-21.

²⁸ The Co-Prosecutors had requested 45 days after the Defence briefs were notified in Khmer and amend this in line with the case now involving one rather than two appellants.